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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-1268

PATRICIA HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE, et al.,

Petitioners,

v.

CORA McRAE, et al.,

Respondents.

On Appeal from the United States District Court for the Eastern District of New York

~~MOTION OF~~ THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A. FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME AND BRIEF AMICUS CURIAE

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BRIEF OF THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A. AS AMICUS CURIAE

INTEREST OF AMICUS

The United Presbyterian Church in the U.S.A. is a religious denomination, organized in 1706 and consisting of some 8,600 churches in 152 presbyteries throughout the United States. William P. Thompson, Stated Clerk of the General Assembly, the supreme governing body, of the United Presbyterian Church in the U.S.A., is the executive officer of the General Assembly.

Through its General Assembly, this Church has established a policy affirming the right of individual moral choice in matters concerning abortion, supporting the availability of medical care to those women who choose to terminate their pregnancy, and specifically urging the restoration of public funding for medically safe abortion care.

INTRODUCTION

Since 1976, Congress has passed a series of enactments (referred to collectively herein as the "Hyde Amendment") limiting the use of Medicaid funds to pay for abortions. The precise terms of the Hyde Amendment have varied with each enactment. However, as demonstrated by the medical testimony reviewed in the district court's opinion and that court's unassailable findings, the net effect of the legislation has been to deny indigent women Medicaid funds to pay for therapeutic, medically necessary abortions except in those cases in which the life of the mother is imminently threatened.

(See typewritten District Court opinion, hereafter "Op.", at 91-100, 113-16, 151).

Further, because the criteria for Medicaid benefits to cover abortions are so appallingly vague, their application inevitably will be arbitrary and inequitable. (Op. at 99-100.)

On the basis of the extensive record below, the district court found that the Hyde Amendment bore no rational relationship whatsoever to any legitimate governmental interest and constituted an impermissible and discriminatory violation of a woman's fundamental right to make a "conscientious decision, in consultation with her physician, to terminate her pregnancy because that is medically necessary for her health." (Op. at 328.)

Amicus United Presbyterian Church joins amicus National Council of Churches of Christ in the U.S.A. in endorsing the result reached by the district court in this case. Amicus, United Presbyterian Church also joins the arguments of amicus National Council of Churches as set forth below and in brief amicus curiae filed on behalf of the National Council of Churches.

ARGUMENT

I.

THE HYDE AMENDMENT VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT

Of all the rights safeguarded by the Bill of Rights, there is none more important than those which stand first

in the First Amendment: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ."

If those words have any fundamental meaning, it is that government will not place obstacles in the way of its citizens' efforts to follow the dictates of conscience and religious obligation unless the most compelling of interests require it and can be subserved in no other way. In the view of amicus United Presbyterian Church, there are few interests of the State sufficiently compelling to justify the overriding of its citizens' conscientious scruples.

This case involves the conscientious scruples and liberty of conscience of indigent women facing unwanted and health-threatening pregnancies. Although the Hyde Amendment does not overtly prohibit abortions in this context, the denial of Medicaid funding is closely related to the constitutionally protected decision and effectively precludes the implementation of decisions of conscience on the abortion question by poor women. Thus, in this case as in Sherbert v. Verner, 374 U.S. 398 (1963), the practice of religion effectively excludes these women from public benefits for which their fellow citizens are qualified. In Sherbert v. Verner, 374 U.S. at 404-406, that sort of legislatively created inhibition on religious practice was held impermissible.

The courts have no higher duty than to determine when statutes seemingly neutral on their face actually operate

to disadvantage the free exercise of religion and then to remedy that disadvantage. Yick Wo v. Hopkins, 118 U.S. 356 (1886). The typical remedy for a claim of denial of free exercise of religion would be to exempt qualifying claimants from a law of general application (Sherbert v. Verner, supra, Wisconsin v. Yoder, 406 U.S. 205 (1971)), but because the court below struck down the discriminatory amendments on equal protection grounds as well, such an individualized remedy, with its difficult and sensitive test of sincerity, is avoided.

Thus amicus United Presbyterian Church supports the contention of appellees and the ruling of the trial court that the "Hyde Amendment" must be found to violate the "free exercise" clause of the First Amendment.

II.

THE ESTABLISHMENT OF RELIGION ISSUES NEED NOT AND SHOULD NOT BE ADDRESSED IN THIS CASE

Because the religious establishment clause issues raised in this case are unusually complex and because there are other and more obvious grounds on which the Hyde Amendment must be invalidated, amicus urges this Court to avoid the establishment issues altogether.

In any event, amicus applauds the district court's reaffirmation of the right of religious groups to participate fully in the political process and its reminder that "the healthy working of our political order cannot safely forego the political action of the churches, or discourage it." (Op. at 326.)

III.

THE HYDE AMENDMENT DENIES POOR WOMEN THEIR RIGHTS TO EQUAL PROTECTION AND DUE PROCESS

The Hyde Amendment effectively denies poor women who are eligible for Medicaid access to medically necessary abortions. The Amendment runs counter to our every concept of due process and equal protection. It operates to deny those individuals in our society who enjoy the least privacy -- the poor -- their fundamental right to privacy in making critical decisions of conscience concerning their health and their family.

The Hyde Amendment is further repugnant to the Constitution because it impedes the exercise of fundamental rights by and discriminates against a discrete, easily identifiable and traditionally disenfranchised segment of the population -- the poor, those whose indigency has forced them to and made them eligible for Medicaid. At the outset, the Amendment operates to the detriment of the poor as a discrete group because funds are withheld from them for elective abortions. More importantly, however, because poverty is a significant medical factor in the determination whether termination of pregnancy is a necessary and desirable health decision, the Hyde Amendment operates as an affirmative health burden which is imposed on the poor and only on the poor. And this burden attaches to the constitutionally protected decision whether to terminate pregnancy and not to any other health decision.

Because the Hyde Amendment burdens the exercise of fundamental rights of privacy and because its burden is imposed upon a suspect class, in order to sustain the Hyde Amendment the government must demonstrate that a compelling interest justifies the legislation and that it constitutes the least restrictive means of achieving such an interest. The government has not met that burden in this case. Indeed, as is evident from the record, Congress' express purpose to limit abortions by enacting the Hyde Amendment bears no rational relationship to this special burden imposed on the poor, and constitutes an unlawful attempt to legislatively override this Court's decision in Roe v. Wade, 410 U.S. 113 (1973). Whatever legitimate fiscal and social considerations might be hypothesized for so limiting Medicaid benefits fail to justify the means employed by the Hyde Amendment. Ironically, any such considerations actually support a policy of Medicaid reimbursement for all therapeutic abortions.

In short, under any analysis, the Hyde Amendment constitutes a violation of the guarantees of Due Process and Equal Protection which lie at the core of our constitutional structure.

CONCLUSION

For the reasons set forth above and for the reasons set forth in the Brief Amicus Curiae on behalf of the National Council of Churces of Christ in the U.S.A., amicus United Presbyterian Church submits that the district court did not err in holding that the Hyde Amendment is unconstitutional.

March 20, 1980

Respectfully submitted,

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